



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/638,373

08/15/2000

Yin Pan

120-296

1548

34845 7590 12/02/2008
Anderson Gorecki & Manaras LLP
33 NAGOG PARK
ACTON, MA 01720

EXAMINER

SEFCHECK, GREGORY B

ART UNIT

PAPER NUMBER

2419

NOTIFICATION DATE

DELIVERY MODE

12/02/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

handerson@smmalaw.com
officeadmin@smmalaw.com
cmorrisette@smmalaw.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte YIN PAN,
AL VILLARICA and ERIC EDWARDS

Appeal 2008-3228
Application 09/638,373¹
Technology Center 2600

Decided: November 28, 2008

Before KENNETH W. HAIRSTON, JOHN A. JEFFERY, and MARC S. HOFF,
Administrative Patent Judges.

HAIRSTON, *Administrative Patent Judge.*

DECISION ON APPEAL

¹ Application filed August 15, 2000. The real party in interest is Nortel Networks, Limited.

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1 to 6, 9 to 12, 14 to 20, 23 to 26, 28 to 34, 37 to 40, and 42 to 47.² We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

The Invention

Appellants' claimed invention is directed to a method and apparatus for allocating resources on a network, such as bandwidth, using filters (Abstract, Spec. 2-3), and a computer program to perform the method.

Claim 1, reproduced below, is representative of the subject matter on appeal:

1. A method of allocating resources on a network, comprising:

receiving a request for reservation of network resources, the reservation including a destination address on the network and a future activation time at which the resources are to be activated; and

allocating resources on network devices on a path to the destination address to accommodate the reservation if the network devices have sufficient resources to accommodate the reservation, wherein the allocating is at the future activation time, and wherein the allocating includes communicating over the network at the future activation time with at least one policy enforcement point, wherein the policy enforcement point is on the path and at an edge of the network, wherein the communicating includes configuring the at least one policy enforcement point by installing, at the future activation time, at least one internet protocol traffic filter in the policy enforcement point, wherein the installing activates the requested reservation of network resources for the destination address on the network, wherein the internet protocol traffic filter includes a matching criteria and an action, wherein the matching criteria includes at least one internet protocol

² Claims 7, 8, 13, 21, 22, 27, 35, 36, and 41 have been cancelled.

network address, and wherein the matching criteria allows the policy enforcement point to identify at least one packet and to perform the action on the packet.

The Rejections

The Examiner relies upon the following as evidence of unpatentability:

Bertin	US 5,687,167	Nov. 11, 1997
Chawla	US 6,771,661 B1	Aug. 3, 2004 (filed Jul. 21, 1999)
Elleson	US 6,459, 682 B1	Oct. 1, 2002 (filed Apr. 7, 1998)
Schneider	US 6,785,728 B1	Aug. 31, 2004 (filed Mar. 23, 2000)

The following rejections are before us for review:

1. Claims 1 to 6, 9, 11, 12, 15 to 20, 23, 25, 26, 29 to 34, 37, 39, 40, and 43 to 46 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bertin and Chawla.

2. Claims 10, 14, 24, 28, 38, and 42 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bertin and Chawla, further in view of Elleson.

3. Claim 47 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Bertin and Chawla, further in view of Schneider.

FINDINGS OF FACT

The relevant facts include the following:

1. As indicated *supra*, Appellants describe and claim a method and apparatus for allocating resources on a network, such as bandwidth, using filters (Abstract, Spec. 2-3; *see also* App. Br. 3-4).

2. Appellants' disclosure provides a special definition of what constitutes a "filter." Appellants' disclosure states as follows:

A filter is defined by two attributes: a matching criteria and an action. Matching criteria such as a source and/or destination address, protocol number, port number, etc., allow the device to identify a packet and perform an action on it. Actions include dropping, shaping, and marking.

Spec. 26:17-21.

3. Appellants' disclosure states that filters are used to make reservations and may perform several functions (Spec. 25:16-19). Appellants' disclosure describes these functions as including assigning different levels of priority to different types of packets and adding/deleting data from the packets (Spec. 25:20-22), and policing network transmissions (Spec. 26:1-16). Appellants' disclosure further describes that the filters "mark" the packet headers in order to assign different levels of priority so that the packet data can be added, deleted, or changed (Spec. 25:20-22). Packets can also be policed such that excess data is "dropped" (Spec. 26: 1-8), and packets are also "shaped" or queued in order to smooth bursty traffic (Spec. 26:8-16).
4. Bertin was cited by the Examiner for a teaching of a method for allocating resources on a high-speed packet switching network (*e.g.*, the Internet), including making bandwidth reservation requests containing a destination or IP address, and allocating resources to nodes (*i.e.*, network devices) on a path to an end node (*i.e.*, destination address) to accommodate the reservation if it is determined that there are sufficient resources (Abstract; Figs. 1 and 2; col. 12, l. 64 to col. 13, l. 17) (Ans. 4-6). The Examiner cited

Bertin as teaching “connection level control information (filter) applied (installed) at the transit and end nodes (devices) of the network (high-speed packet switching network; Internet) specifying the bandwidth to be reserved (action) for packets received along a path to a destination address (matching criteria; IP address).” (Ans. 14). The Examiner made a finding that this control information “allows the bandwidth of the network device to be reserved and the resource allocation policy of the connection to be enforced for packets transmitted through these transit nodes along the path to the destination.” (Ans. 14).

5. Bertin was also cited by the Examiner for a teaching of a network resource allocation method that can preempt or discard (*i.e.*, drop) packets for transmission based on the presence of new packets having a higher priority and based on encoded information in the packet header (col. 1, ll. 55-66), and which can use the packet header information to route and queue the packets for transmission in the network based on priority (*i.e.*, marking) (col. 5, l. 65 to col. 6, l. 33) (Ans. 9).
6. Bertin further teaches a resource allocation method which transmits packets and performs bandwidth allocation “at the connection set up time” (col. 2, ll. 21-30), and uses a network topology database 306 (col. 6, ll. 12-26; col. 13, ll. 1-3). Bertin teaches reserving bandwidth by performing a connection request which includes matching origin and destination network addresses (*i.e.*, matching criteria) (col. 12, ll. 62-67), and teaches taking actions such as a “call acceptance” (*i.e.*, marking), a “call reject” (*i.e.*, dropping), or

updating and modifying the link metrics (*i.e.*, shaping) when a call is accepted (col. 13, ll. 10-19).

7. Chawla was cited by the Examiner for a teaching of a network resource allocation method for reserving bandwidth that allocates resources to a communications device at a future activation time (Abstract; Fig. 7) (Ans. 6).
8. Chawla further teaches a method of bandwidth allocation in a network using a Resource ReSerVation Protocol (“RSVP”) to provide guaranteed Quality of Service (“QoS”) (col. 2, ll. 40-49; packet 195 and RSVP header 180 in Fig. 2). Chawla teaches that a packet classifier 104 is used “to filter each packet (data in) that arrives at the device to determine the route and queue for the packet” (col. 3, ll. 35-37), and teaches an admission control 102 which determines whether there is sufficient bandwidth available for the packet (Fig. 1; col. 3, ll. 13-38). Chawla teaches that the packet classifier 104 examines and classifies packets (col. 5, ll. 33-37) for different classes of service in the data packets (Fig. 5, computer data, voice data, fax data; col. 14, ll. 35-53). Chawla teaches identifying data packets (*i.e.*, marking) using the Tspec field 191 in packet data structure 510 (*see* Fig. 2; col. 3, ll. 58-61). Chawla teaches identifying a stream of data (*i.e.*, matching criteria) and then enforcing bandwidth allocations or indicating a requested level of service and destination location for that data stream (*i.e.*, taking an action) (col. 3, ll. 58-61; col. 4, ll. 20-25). Chawla further teaches that the amount of allocated bandwidth is then modified in accordance with the future bandwidth allocation (Fig. 7, step 503).

9. Ellesson was cited by the Examiner for a teaching of a method, apparatus, and computer program for controlling packet traffic in an IP network that defines service classes of data traffic by encoding the data packet headers to determine priority (Abstract) (Ans. 10-11). Ellesson was also cited by the Examiner for a teaching of a Response Reservation Protocol (“RSVP”) reservation system for allocating bandwidth to network devices (col. 3, ll. 3-7) (Ans. 11).
10. Schneider was cited by the Examiner for teaching a filter to control access to a network which enables network resource access to multiple users having addresses within a range of addresses through a single access filter and address (Figure 9, user group 917 and 919 and range of addresses shown in window 909; col. 5, ll. 15-60; col. 23, ll. 33-52) (Ans. 12-13).

ISSUES

There are three issues before us regarding whether Appellants have shown that the Examiner erred in rejecting the claims under 35 U.S.C. § 103(a).

1. Did the Examiner err in determining that Bertin and Chawla teach or suggest the subject matter claimed in claims 1 to 6, 9, 11, 12, 15 to 20, 23, 25, 26, 29 to 34, 37, 39, 40, and 43 to 46?
2. Did the Examiner err in determining that Bertin and Chawla, taken with Ellesson, teach and suggest the subject matter claimed in claims 10, 14, 24, 28, 38, and 42?
3. Did the Examiner err in determining that Bertin and Chawla, taken with Schneider, teach and suggest the subject matter claimed in claim 47?

We note that Appellants have not separately argued the merits of claims 2 to 6, 9, 11, 12, 16 to 20, 23, 25, 26, 30 to 34, 37, 39, and 40. For these claims, Appellants rely on the arguments presented with respect to the patentability of claims 1, 15, 29, and 43 (*see* App. Br. 7-14). We note that independent claims 1, 15, 29, and 43 all recite the same limitation argued by Appellants, of “installing, at the future activation time, at least one internet protocol traffic filter” (*see* claims 1, 15, 29, and 43; App. Br. 8, 10-11). We take claim 1 as representative of the group consisting of claims 1 to 6, 9, 11, 12, 15 to 20, 23, 25, 26, 29 to 34, 37, 39, 40, and 43. Thus, claims 2 to 6, 9, 11, 12, 15 to 20, 23, 25, 26, 29 to 34, 37, 39, 40, and 43 stand or fall with representative claim 1. *See* 37 C.F.R. § 41.37(c)(1)(vii).

PRINCIPLES OF LAW

“During examination, ‘claims ... are to be given their broadest reasonable interpretation consistent with the specification, and ... claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art.’” *In re Am. Acad. of Sci. Tech. Cir.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004); *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997). “[T]he specification ‘is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.’” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1315 (Fed. Cir. 2005) (citations omitted).

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a

person having ordinary skill in the art to which said subject matter pertains.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 127 S. Ct. at 1734 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”)

The Examiner’s “articulated reasoning . . . in the rejection must possess a rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). The Supreme Court, citing *In re Kahn*, 441 F.3d at 988, stated that “rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. at 1741. However, “the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *Id.* The test is “whether the overall disclosures, teachings, and suggestions of the prior art, and the level of ordinary skill in the art – i.e., the understandings and knowledge of persons having ordinary skill in the art at the time of the invention – support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d at 988. “The teaching, motivation, or suggestion may be implicit from the prior art as a whole, rather than expressly

stated in the references,” and “[t]he test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art.” *In re Kahn*, 441 F.3d at 987-88.

The Examiner bears the initial burden of presenting a prima facie case of obviousness, and Appellants have the burden of presenting a rebuttal to the prima facie case. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

ANALYSIS

1. Did the Examiner err in determining that Bertin and Chawla teach or suggest the subject matter claimed in claims 1 to 6, 9, 11, 12, 15 to 20, 23, 25, 26, 29 to 34, 37, 39, 40, and 43 to 46?

The phrase: “installing ... at least one internet protocol traffic filter” (claim 1)

Appellants contend that Bertin and Chawla do not disclose or suggest allocating resources on a network including the limitation of claims 1, 15, 29, and 43 of “installing, *at the future reservation time*, at least one internet protocol traffic filter in the policy enforcement point, *wherein the installing activates the requested reservation of network resources for the destination address on the network, wherein the internet protocol traffic filter includes a matching criteria and an action, wherein the matching criteria includes at least one internet protocol network address, and wherein the matching criteria allows the policy enforcement point to identify at least one packet and to perform the action on the packet.*” (App. Br. 8, 10-11). Essentially, Appellants argue that Bertin “does not disclose or suggest the installation of an internet protocol traffic filter” as in claims

1, 15, 29, and 43 (App. Br. 14). Appellants further argue that the filter must include a matching criteria and an action, wherein the matching criteria can be an internet protocol address, and that such a filter is neither disclosed nor suggested by Bertin or Chawla (App. Br. 13). Appellants also argue that Bertin “teaches bandwidth reservation in general, performed at the time a connection is set up” (App. Br. 11), and that Bertin’s “teaching of reserving bandwidth in some unspecified way” does not disclose or suggest the installation of a filter as recited in claim 1 (App. Br. 14).

The Examiner responds that Appellants’ Specification defines “the claimed ‘filters’ as being installed for the purposes of allocating resources along a network path if the conditions of the resource reservation request can be met at the enforcement points along that path” (Ans. 14-15), and that, accordingly, Bertin’s connection level information and reservation accommodation determination meets the claimed “filter installations” when considered in light of how the terms are defined in Appellants’ Specification (Ans. 15).

One of ordinary skill in the art would interpret the claimed “filter” in light of the Specification. *See Phillips, supra*. We note that Appellants provide an explicit definition for “filter” at page 26 of the Specification (Finding of Fact 2). Furthermore, we note that Appellants’ disclosure describes a “filter” as being defined by two attributes: (1) “a matching criteria,” and (2) “an action.” (Finding of Fact 2). Appellants define the “matching criteria” as including a “source and/or destination address” that can “allow the device to identify a packet and perform an action on it.” (Finding of Fact 2). Appellants define “actions” to include “dropping, shaping, and marking.” *Id.* Appellants further define “dropping,”

“shaping,” and “marking” as including deleting packets, queuing packets, and assigning priority to packets, respectively (Finding of Fact 3).

Thus, while Appellants argue that the disclosed “filter” is not the same as Bertin’s connection set up and bandwidth reservation process, Appellants’ disclosure nonetheless uses the term “filter” to mean identifying a matching criteria and taking an action (*see* Finding of Fact 2). Therefore, Appellants’ own disclosure appears to support the Examiner’s construction of the term “filter” to mean “connection level control information,” which can include bandwidth allocation, and which is applied to manage bandwidth on the network and provide a desired Quality of Service (col. 2, ll. 21-31).

Although we agree with Appellants that the filter must include a matching criteria and an action, wherein the matching criteria can be an internet protocol address (App. Br. 13) (*see* Finding of Fact 2), we do not agree that such a filter is neither disclosed nor suggested by Bertin or Chawla. Instead, we agree with the Examiner’s findings of fact and conclusions of obviousness, finding that Bertin teaches or suggests all of the features of claim 1 except for a future activation time, relying on Chawla for future activation, and concluding that claim 1 would have been obvious in view of Bertin and Chawla (Ans. 3-9 and 14), and we adopt them as our own (Findings of Fact 4, 5, and 7), along with some amplification of the Examiner’s explanation of the teachings of Bertin and Chawla.

We note that Bertin teaches reserving bandwidth by matching origin and destination network addresses (*i.e.*, matching criteria), and teaches taking actions such as a “call acceptance” (*i.e.*, marking), a “call reject” (*i.e.*, dropping), or updating and modifying the link metrics (*i.e.*, shaping) when a call is accepted

(Finding of Fact 6). Thus, we agree with the Examiner that Bertin’s connection level information and reservation accommodation determination meets the claimed “filter installations” when considered in light of how the terms are defined in Appellants’ Specification (Ans. 15), and we are not persuaded by Appellants’ argument that Bertin fails to teach or suggest the limitation of representative claim 1 of “installing ... at least one internet protocol filter.”

Chawla, like Bertin, also teaches filtering (Finding of Fact 8). Chawla teaches that a packet classifier 104 is used “to filter each packet (data in) that arrives at the device to determine the route and queue for the packet” (col. 3, ll. 35-37). In our view, this teaching bolsters the rejection of claim 1 over the combined teachings of Bertin and Chawla. In fact, Chawla also discloses identifying a stream of data (*i.e.*, matching criteria) and then enforcing bandwidth allocations or indicating a requested level of service and destination location for that data stream (*i.e.*, taking an action) (col. 3, ll. 58-61; col. 4, ll. 20-25) (Finding of Fact 8), which meets the claimed limitation of a “filter” and which, as defined by Appellants (*see* Spec. 26) (Finding of Fact 2), serves to match criteria and then take an action. In our view, both Bertin and Chawla perform filtering (*i.e.*, using matching criteria such as an IP or network address and then taking an action).

With respect to Appellants’ argument that Bertin “teaches bandwidth reservation in general, performed at the time a connection is set up” (App. Br. 11), we agree with the Examiner that Appellants cannot show nonobviousness by attacking references individually where rejections are based on a combination of references (Ans. 15). *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (citing *In re Keller*, 642 F.2d 413, 425 (CCPA 1981); M.P.E.P. § 2145. In

the instant case, we are not persuaded by Appellants argument that Bertin does not perform bandwidth reservation and allocation at a future allocation time, since Chawla was relied upon as teaching this limitation.

In our view, Appellants have neither overcome the Examiner's prima facie case of obviousness nor adequately demonstrated that the Examiner erred with respect to the rejection of claims 1 to 6, 9, 11, 12, 15 to 20, 23, 25, 26, 29 to 34, 37, 39, 40, and 43.

The phrases: "marking," "dropping," and "shaping" (claims 44 to 46)

With respect to claims 44 to 46, Appellants contend that neither Bertin nor Chawla performs the specific actions required by these claims (*i.e.*, marking, dropping, and shaping) (App. Br. 14), that the teachings of Bertin and Chawla do not include or suggest filter installation being performed "at a future reservation time" (App. Br. 14), and that the combination of Bertin and Chawla therefore does not constitute a prima facie case of obviousness under 35 U.S.C. § 103 with respect to claims 44 to 46 (App. Br. 15).

We agree with the Examiner's findings of fact and conclusions of obviousness and adopt them as our own, along with some amplification of the Examiner's explanation of the teachings of Bertin and Chawla.

We are not persuaded by Appellants arguments with respect to claims 44 to 46, and instead we agree with the Examiner that Bertin teaches the specific actions of marking and dropping (Findings of Fact 5). We add that Bertin further teaches shaping, and provides further disclosure of marking and dropping (Finding of Fact 6).

Furthermore, in our view, Chawla also teaches enforcing bandwidth allocations, a process which one of ordinary skill in the art would recognize as including marking and dropping packets, since enforcing bandwidth allocations would require determining an allocation and then applying the packet classifier 104 and admission control 102 to allow some packets to be transmitted (*i.e.*, marked), and some packets to be denied access to the network (*i.e.*, dropped) (*see* Finding of Fact 8). In addition, Chawla teaches that a packet classifier 104 is used “to filter each packet (data in) that arrives at the device to determine the route and queue for the packet” (Finding of Fact 8), and this meets Appellants’ description of “shaping” which involves queueing a packet (Finding of Fact 3). In our view, the bandwidth allocation process described by Chawla (discussed *supra*), is indistinguishable from the process Appellants describe in their Specification (Finding of Fact 3). Finally, we note that Chawla teaches that the amount of allocated bandwidth is “modified” in accordance with the future bandwidth allocation (Fig. 7, step 503) (Finding of Fact 8), and in our view this further suggests “shaping.”

We are not persuaded by Appellants’ contention that Bertin and Chawla do not teach or suggest installing a filter at a future activation time and thus cannot teach or suggest the specific actions recited in claims 44 to 46. This line of reasoning is unpersuasive because Appellants attack references individually where the rejection is based upon the teachings of a combination of references. In any event, we agree with the Examiner that Chawla teaches this limitation as previously discussed. In our view, Appellants have not refuted the Examiner’s *prima facie* case of obviousness with respect to claims 44 to 46.

For the above reasons, Appellants' arguments have not persuaded us of error in the Examiner's rejection of claims 1 to 6, 9, 11, 12, 15 to 20, 23, 25, 26, 29 to 34, 37, 39, 40, and 43 to 46 under 35 U.S.C. § 103(a) as being unpatentable over Bertin and Chawla, and we sustain the Examiner's rejection.

2. Did the Examiner err in determining that Bertin and Chawla taken with Ellesson teach or suggest the subject matter claimed in claims 10, 14, 24, 28, 38, and 42?

Appellants argue that Ellesson does not teach or suggest a filter (App. Br. 15-18). As discussed above, we conclude that Appellants have not adequately demonstrated that the Examiner erred with respect to the rejection of claim 1 as being obvious over Bertin and Chawla. Furthermore, we agree with the Examiner that Ellesson teaches classes of service and an RSVP protocol (Finding of Fact 9). We agree with the Examiner's findings of fact and conclusions of obviousness (Ans. 10-11, discussing Ellesson), and adopt them as our own, along with some amplification of the Examiner's explanation of the teachings of Chawla.

We note that Chawla teaches a method of bandwidth allocation in a network using a Resource ReSerVation Protocol ("RSVP") to provide guaranteed Quality of Service ("QoS") (col. 2, ll. 40-49; packet 195 and RSVP header 180 in Fig. 2) (Finding of Fact 8), which in our view operates to allocate resources based on a requested level of service and is indistinguishable in operation from Appellants' claimed and disclosed response reservation protocol (RSVP). We further note that Chawla teaches distinguishing classes of service (Fig. 5, computer data, voice data, fax data), and suggests marking packet headers to identify the different classes of

service (Fig. 2, Tspec field 191 in packet data structure 510; col. 3, ll. 49-61; col. 14, ll. 35-53) (Finding of Fact 8).

With regard to Appellants' argument that Ellesson does not teach a filter, we note that the Examiner relied upon Bertin to teach this limitation. In addition, we note that Chawla also teaches a filter (*i.e.*, packet classifier 104 and/or admission control 102) (Finding of Fact 8). Thus, we are not persuaded by Appellants' arguments attacking Ellesson individually when the rejection is based on a combination of Bertin, Chawla, and Ellesson. *See In re Merck & Co., Inc.*, 800 F.2d at 1097 (citing *In re Keller*, 642 F.2d at 425).

In our view, one of ordinary skill in the art would have found Appellants' claimed subject matter in claims 10, 14, 24, 28, 38, and 42 obvious in light of the collective teachings and suggestions of Bertin, Chawla, and Ellesson, and Appellants have not overcome the Examiner's prima facie case of obviousness with respect to these claims.

For the above reasons, Appellants' arguments have not persuaded us of error in the Examiner's rejection of claims 10, 14, 24, 28, 38, and 42 under 35 U.S.C. § 103(a) as being unpatentable over Bertin and Chawla, further in view of Ellesson, and we sustain the Examiner's rejection.

3. Did the Examiner err in determining that Bertin and Chawla taken with Schneider teach or suggest the subject matter claimed in claim 47?

Appellants admit that Schneider discloses "that a range of IP addresses is one way to identify users to an access filter" (App. Br. 19), and argue that Schneider does not cure the deficiencies of Bertin and Chawla as applied to claim

1 (App. Br. 18-20). In other words, Appellants rely on their arguments above as to Bertin and Chawla to rebut the Examiner's prima facie case as to claim 47 (App. Br. 20). We agree with the Examiner's findings of fact and conclusions of obviousness (Ans. 12-13, discussing Schneider) with regard to claim 47 for the reasons given above with respect to representative claim 1 from which claim 47 depends, and adopt them as our own. In our view, Appellants have not overcome the Examiner's prima facie case of obviousness with respect to claim 47. Accordingly, we sustain the Examiner's rejection of claim 47 under 35 U.S.C. § 103.

CONCLUSIONS OF LAW

We conclude that the Appellants have not shown that the Examiner erred in rejecting claims 1 to 6, 9 to 12, 14 to 20, 23 to 26, 28 to 34, 37 to 40, and 42 to 47 under 35 U.S.C. § 103(a).

DECISION

The decisions of the Examiner to reject claims 1 to 6, 9 to 12, 14 to 20, 23 to 26, 28 to 34, 37 to 40, and 42 to 47 are affirmed.

Appeal 2008-3228
Application 09/638,373

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

KIS

Anderson Gorecki & Manaras LLP
33 Nagog Park
Acton, MA 01720